1 | Daniel Rigmaiden
Agency # 10966111
2 | CCA-CADC
PO Box 6300
3 | Florence, AZ 85132
Telephone: none
4 | Email: none

5 | Daniel David Rigmaiden
Pro Se, Defendant

6

7 | **UNITED STATES DISTRICT COURT**

8 | **DISTRICT OF ARIZONA**

9

10 | United States of America,

11 | Plaintiff,

12 | v.

13 | Daniel David Rigmaiden, et al.,

14 | Defendant.

No. CR08-814-PHX-DGC

NOTICE OF APPEAL
(INTERLOCUTORY) FROM PORTION
OF COURT'S ORDER (Dkt. #1009)
DENYING Dkt. #847 AND Dkt. #927

15

16 | Notice is hereby given that Daniel David Rigmaiden, *pro se* defendant in the above

17 | named case, hereby appeals (interlocutory) to the United States Court of Appeals for the

18 | Ninth Circuit from an order denying the defendant's **(1)** *Motion For Order Requiring*

19 | *Government To Comply With Data Deletion Requirements Of N.D.Cal. 08-70460-HRL/PVT,*

20 | *08-70503-PVT, AND 08-70502-PVT Warrants* (Dkt. #847), and **(2)** *First Supplement To*

21 | *Motion For Order Requiring Government To Comply With Data Deletion Requirements Of*

22 | *N.D.Cal. 08-70460-HRL/PVT, 08-70503-PVT, AND 08-70502-PVT Warrants,*[1] *i.e.,* the

23 | motions requesting that the district court order the government to destroy all seized *out-of-*

24 | *scope* data in its possession, as required by the express terms of the N.D.Cal. warrants. The

25 | 1.   This motion was a proposed motion (Dkt. #927) corresponding to a motion for leave
26 | to file (Dkt. #926). At Dkt. #1009, the Court granted the defendant's motion for leave to file
Dkt. #927. *See Court's May 8, 2013 Order*, p. 50. However, the defendant does not have
27 | access to the docket for his case and does not know what the new docket number is for *First*
Supplement To Motion For Order Requiring Government To Comply With Data Deletion
28 | *Requirements Of N.D.Cal. 08-70460-HRL/PVT, 08-70503-PVT, AND 08-70502-PVT*
Warrants.

- 1 -

1 defendant will be proceeding *pro se* on this interlocutory appeal and does not require

2 appointment of counsel.

3   The district court denied the above motions on May 8, 2013 via an order at Dkt.

4 #1009. While other sections of the order are relevant to the district court's decision, the

5 primary portion of the order addressing the motions at Dkt. #847 and Dkt. #927 reads as

6 follows:

7   Defendant filed a Motion for Order Requiring Government to Comply
   with Data Deletion Requirements, requesting an order directing the
8 government to delete or destroy data not originally seized by Agent Daun.
   Doc. 847. Specifically, Defendant seeks an order requiring the government to
9 locate and isolate all the physical data storage devices that were seized from
   his apartment and storage unit and sanitize (by overwriting the devices with
10 random data) or physically destroy the devices, with the exception of the files
   and data listed in Agent Daun's 'Computer Forensic Report.' *Id.* at 5-8. The
11 government objects, contending that there is no authority for Defendant's
   demands. Doc. 873 at 66. The Court agrees and, as discussed above, finds that
12 the government made a good faith effort to comply with the Computer Search
   Protocol by deleting mirrored images of devices that contained no relevant
13 information. The motion is denied. Defendant's motion for leave to
   supplement the motion (Doc. 926) is granted.
14
   Court's May 8, 2013 Order (Dkt. #1009, p. 49-50).
15

16   During the March 28, 2013 motions hearing, the defendant identified additional

17 storage devices that contain *out-of-scope* data that also require destruction pursuant to the

18 terms of the N.D.Cal. warrants:

19   [THE DEFENDANT:]   One other issue that's tied in with the digital
   data search is the government failing to delete out-of-scope data and wipe the
20 seized storage devices, which is a requirement in the warrants. This is
   discussed in my motions at Docket 847 and 927. I'm not going to go into too
21 many details on this, but I am going to add a couple of points to the process I
   described at the end of the motions that I want the government to follow to
22 delete the data. There are a couple of categories of data that I left out.

23   One is they need to delete and overwrite file and folder properties
   corresponding to all deleted files that were deleted prior to the government
24 seizing the storage devices. And apart from the storage devices, they also need
   to delete all residual data that may exist from their forensic examinations,
25 because that data would contain out-of-scope data as well....

26 *March 28, 2013 Motions Hearing Transcript*, p. 20.

27   For the district court's and government's information, the portion of the order being

28 appealed is a final decision based on the "collateral-order" exception under <u>Cohen v.</u>

NOTICE OF APPEAL (INTERLOCUTORY) FROM PORTION OF COURT'S ORDER (Dkt. #1009) DENYING Dkt. #847 AND Dkt. #927
CR08-814-PHX-DGC

1   <u>Beneficial Industrial Loan Corp.</u>, 337 U.S. 541 (1949). All requirements are met under

2   *Cohen*.

3   * * * * *

4   This notice was drafted by the *pro se* defendant, however, he authorizes his shadow

5   counsel, Philip Seplow, to sign and file this notice on his behalf using the ECF system.

6

7   DANIEL DAVID RIGMAIDEN, Pro Se
                                                             Defendant:
8
                                                             s/ Daniel Rigmaiden
9

10   Daniel Rigmaiden
                                                             Agency # 10966111
                                                             CCA-CADC
11   PO Box 6300
                                                             Florence, AZ 85132
12

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1 Respectfully Submitted:

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3   PHILP SEPLOW, Shadow Counsel, on
                                                            behalf of DANIEL DAVID RIGMAIDEN,
4   Pro Se Defendant:

5

6   s/ Philip Seplow
                                                            Philip Seplow
7   Shadow Counsel for Defendant.

8   CERTIFICATE OF SERVICE

9

10   I hereby certify that on: I caused the attached document to be

11 electronically transmitted to the Clerk's Office using the ECF system for filing and
    transmittal of a Notice of Electronic Filing to the following ECF registrants:

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28 By: s/ Daniel Colmerauer
    (Authorized agent of Philip A. Seplow, Shadow Counsel for Defendant; See ECF Proc. I(D) and II(D)(3))

- 4 -